



June 12, 2002

Mr. Lou Bright
General Counsel
Texas Alcoholic Beverage Commission
P.O. Box 13127
Austin, Texas 78711-3127

OR2002-3169

Dear Mr. Bright:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164228.

The Texas Alcoholic Beverage Commission (the "commission") received a request for a copy of a specified commission file pertaining to an administrative action involving the commission that was taken against a specified defendant. You indicate that the commission has released and will release some responsive information to the requestor. You claim, however, that the highlighted portions of the submitted information are excepted from disclosure pursuant to sections 552.101, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information, which includes a representative sample document.¹

You claim that the highlighted portions of Attachment C are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 51.251 of

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

the Occupations Code.² We note, however, that House Bill No. 2812 of the Seventy-seventh Legislature, which enacted section 56.001 of the Occupations Code, repealed the note to section 51.251 that was previously applicable to the highlighted information in Attachment C. The language of section 56.001 corresponds in substance to the language of the former note to section 51.251.³ Section 56.001 provides:

The social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specific occupation or profession that is provided to the licensing agency is confidential and not subject to disclosure under Chapter 552, Government Code.

Occ. Code § 56.001. You indicate that the highlighted social security numbers in Attachment C concern a person who was issued a valid seller/server certification by the commission. We, thus, presume that the commission obtained these numbers in connection with the issuance of this certification. Accordingly, we conclude that the commission must withhold the highlighted social security numbers in Attachment C from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 56.001 of the Occupations Code.

You also claim that some of the highlighted information in Attachment E is excepted from disclosure pursuant to section 552.101 in conjunction with the common-law right to privacy. Section 552.101 also encompasses information protected from disclosure by the common-law right to privacy. Information is protected by the common-law right of privacy when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert denied*, 430 U.S. 931 (1977); *see also* Open Records Decision No. 611 at 1 (1992). Prior decisions of this office have found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). Based on our review of the highlighted information in Attachment E, we conclude that the commission must withhold from disclosure the information that we have marked pursuant to section 552.101 in conjunction with the common-law right to privacy.

² Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by other statutes.

³ *See* Act of May 22, 2001, 77th Leg., R.S., § 14.001(b), 2001 Tex. Sess. Law Serv. 3970, 4098 (Vernon's) (repealing section 1, chapter 314, Acts of the 76th Legislature, Regular Session, 1999).

You also claim that the highlighted Texas driver's license numbers in Attachments D and E are excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts information from disclosure that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See Gov't Code § 552.130.* Accordingly, we conclude that the commission must withhold these highlighted driver's license numbers in Attachment D and E from disclosure pursuant to section 552.130 of the Government Code.

You also claim that the highlighted account numbers in Attachments E and F are excepted from disclosure pursuant to section 552.136 of the Government Code. Section 552.136 makes certain access device numbers confidential and provides in pertinent part:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. Accordingly, we conclude that the commission must withhold from disclosure the highlighted credit card number in Attachment F, as well as the highlighted account numbers in Attachment E, that we have marked, pursuant to section 552.136 of the Government Code.

In summary, the commission must withhold the highlighted social security numbers in Attachment C from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 56.001 of the Occupations Code. The commission must withhold from disclosure the information that we have marked in Attachment E pursuant to section 552.101 in conjunction with the common-law right to privacy. The commission must withhold the highlighted Texas driver's license numbers in Attachments D and E from disclosure pursuant to section 552.130 of the Government Code. The commission must withhold from disclosure the highlighted credit card number in Attachment F, as well as the highlighted account numbers in Attachment E, which we have marked, pursuant to section 552.136 of the Government Code. The commission must release the remaining highlighted information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Ronald J. Bounds". The signature is written in a cursive style with a large initial "R".

Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 164228

Enc. Marked documents

cc: Mr. Rex Easley, Jr.
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(w/o enclosures)